IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BARBARA BOYD, Plaintiff,	§ § §	
v.	§	CIVIL ACTION NO. 5:16-cv-00804
	§	
THE CITY OF SAN ANTONIO, TEXAS, and WILLIAM MCMANUS in his official capacity as Chief of Police of the San Antonio Police Department, Defendants.	§ § § § §	JURY TRAIL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

PRELIMINARY STATEMENT

1. BARBARA BOYD, Plaintiff, files this civil action for declaratory, injunctive, and monetary relief seeking redress from the Defendants for unlawful discrimination due to Plaintiff's disability. Plaintiff asserts that the Defendants failed to provide her with effective communication and discriminated against her in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (Section 504); Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12131, *et seq.* (ADA); and Chapter 121 of the Texas Human Resources Code (121).

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, as this case is brought pursuant to federal civil rights statutes, namely, the ADA and Section 504.

3. This Court has supplemental jurisdiction over claims arising under Chapter 121 of the Texas Human Resources Code. The state claims alleged derive from a common fact situation and are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367.

4. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. § 1391 because: (1) Plaintiff resides in this District; (2) Defendants' offices are located in this District and the entity is subject to this Court's personal jurisdiction; (3) a substantial part of the events or omissions giving rise to this claim occurred in this District.

PARTIES

5. Barbara Boyd is a resident of San Antonio, Bexar County, Texas. She is a qualified individual with a disability having been diagnosed with deafness and Retinitis Pigmentosa. Her disabilities substantially limit one or more major life activities including speaking, hearing, seeing, communicating, and reading.

6. Defendant Chief William McManus is the Chief of Police of the San Antonio Police Department. He is being sued in his official capacity to effect injunctive relief. Chief McManus may be served with process at the Headquarters building of the San Antonio Police Department at 315 South Santa Rosa Ave., San Antonio, Texas 78207.

7. Defendant City of San Antonio is a municipality that, *inter alia*, operates the San Antonio Police Department. The City which is located in Bexar County, Texas, is a recipient of federal financial assistance and a public entity. The City of San Antonio may be served with process by serving the City Clerk, Leticia M. Vacek, at City Hall, 100 S. Flores, 2nd Floor, San Antonio, Texas 78205.

8. Defendant City of San Antonio is a local government, and thus is a "public entity" under the ADA. 42 U.S.C. § 12131(1)(A).

FACTUAL BACKGROUND

9. BARBARA BOYD has been diagnosed with Usher's Syndrome, a condition that affects both hearing and vision. She is Deaf and has also been diagnosed with Retinitis Pigmentosa (RP).

10. Ms. Boyd communicates primarily using American Sign Language (ASL).

11. On August 17, 2014, Ms. Boyd's minor son "D.T." was in a public area with other children when he was assaulted by an adult male. (To ensure protection of the minor's privacy he is referred in this complaint only by initials.)

12. At the time of the incident, D.T. was 13 years old.

13. D.T. is hearing but both his mother, Barbara Boyd, and his step-father, Edward Boyd, are Deaf. Edward Boyd does not have the same visual impairment.

14. Officers of the San Antonio Police Department responded to the call about the assault on D.T. SAPD offense case number "SAPD14181100" was assigned to the report taken by the officers.

15. The City of San Antonio operates the San Antonio Police Department, which is a public facilities under Texas law. TEX. HUM. RES. CODE § 121.002(5).

16. While making the initial report to police, Ms. Boyd was not provided with an ASL interpreter or other effective auxiliary aid or service.

17. Ms. Boyd began requesting an interpreter while making the initial report to the patrol officers who responded to the call.

18. Ms. Boyd also suggested a video relay interpreter on a tablet computer as an option if no interpreter was available to come to their location.

19. All requests by Ms. Boyd to have an interpreter were denied.

20. Officers at the scene informed family members that D.T., would need to go to the police station to make a statement.

21. Both Barbara Boyd and Edward Boyd asked to go with D.T. when he was taken to a San Antonio police station to give his statement.

22. Officers refused to allow both Mr. and Ms. Boyd to be present. Only Ms. Boyd was allowed to accompany her son to his interview at the police department.

23. During the interview of her son, Ms. Boyd repeatedly requested an American Sign Language (ASL) interpreter to assist her with understanding the communications.

24. Ms. Boyd's requests for a qualified ASL interpreter while she was at the police station were also denied.

25. At times the 13 year old D.T. was expected to explain what was happening and to interpret for Ms. Boyd, while simultaneously giving his victim's statement to police.

26. Ms. Boyd was not provided with an ASL interpreter or any other appropriate and reasonable accommodation which would furnish her with effective communication while she was interacting with police officers.

27. Ms. Boyd was the sole parent companion with D.T. at the police station while the boy was being interviewed.

28. A "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate. 28 C.F.R. § 35.160.

29. Defendants' conduct, policies, practices, and procedures are unlawful and violate Section 504, the ADA, and Chapter 121.

30. Ms. Boyd brings her lawsuit to obtain an injunction to require Defendants to comply with and abide by the ADA, Section 504, and Chapter 121. Ms. Boyd also seeks damages to compensate her for the harm and injuries their unlawful actions have caused.

31. Ms. Boyd did not receive any information in an accessible format as to what the follow up procedure would be after D.T. completed his statement.

32. The suspect in the criminal case lived in the same apartment complex as the Boyd family but Ms. Boyd was not able to receive follow up information from the SAPD, in an accessible format, regarding this potential risk situation for her son and the other members of her family.

33. The ADA has been in effect since 1990, and 24 years had elapsed prior to the date of this denial of effective communication by SAPD.

34. Employees of the SAPD acted intentionally, and/or with malice or gross negligence, in refusing to provide effective communication to a parent companion of a child crime victim.

35. The actions of the SAPD employees showed deliberate indifference and reckless disregard for Ms. Boyd's right and for the ability of a parent companion to understand communications and events while her child was being interviewed by police.

36. Ms. Boyd continues to reside in San Antonio, Texas, and will need to rely on the San Antonio Police Department in the future when her situation requires the assistance of a police department.

CAUSES OF ACTION

Count I: Title II of the Americans with Disabilities Act

37. Ms. Boyd restates and incorporates by reference each and every allegation contained in Paragraphs 1 through 36 as if fully set forth herein.

38. On July 26, 1990, Congress enacted the Americans with Disabilities Act ("ADA") to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

39. Congress enacted the ADA to remedy various forms of discrimination experienced by individuals with disabilities, including "communication barriers" such as the inability to communicate with police officers during an interview. 42 U.S.C. § 12101(a)(5).

40. Congress enacted the ADA to also assure persons with disabilities "full participation" in their community, such as the ability to report accidents, crimes, and other emergencies in a manner that is accessible to persons with disabilities. 42 U.S.C. § 12101(a)(7).

41. Title II of the ADA provides that "…no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

42. Title II of the ADA defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

43. Ms. Boyd has actual disabilities because she has physical impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(1)(A).

44. Ms. Boyd has a record of being Deaf and of having Retinitis Pigmentosa, and she is regarded as having these disabilities.

45. Ms. Boyd is a qualified individual with a disability as defined by the ADA. 42 U.S.C. § 12102(2).

46. Title II of the ADA applies to state and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by state and local government entities. 42 U.S.C. §§ 12131–12132.

47. Defendant City of San Antonio is a public entity within the meaning of the ADA because it is a local government entity that provides services, programs, and activities. 42 U.S.C. § 12131(1)(B).

48. Pursuant to Title II of the ADA and its implementing regulations, public entities are required "to take appropriate steps to ensure that communications with applicants, participants, members of the public, *and companions* with disabilities are as effective as communications with others". 28 C.F.R. § 35.160(a)(1) (emphasis added).

49. Pursuant to Title II of the ADA and its implementing regulations, in order to achieve effective communication, public entities are to furnish appropriate auxiliary aids and services. 28 C.F.R. § 35.160(b)(1).

50. Under Title II and its implementing regulations, public entities such as the San Antonio Police Department and the City of San Antonio must give "primary consideration" to the requests of individuals with a disability in determining with auxiliary aid to use. 28 C.F. R. § 35.160(b)(2).

51. A public entity is required to ensure communications with applicants, participants, members of the public, *and companions* with disabilities are as effective as communications with others. 28 C.F.R. § 35.160 (a)(1) (emphasis added).

52. A "companion" is a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate. 28 C.F.R. § 35.160 (a)(2).

53. A public entity is required to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, *companions*, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service program, or activity of a public entity. 28 C.F.R. § 35.160 (b)(1) (emphasis added).

54. Defendants have discriminated against Plaintiff on the basis of her disability by denying Plaintiff equal access to the services, programs, and benefits offered to others because Defendant's services are inaccessible to individuals with a disability, in violation of Title II of the ADA. 28 C.F.R. § 35.130(a).

55. Defendants are required by the ADA to provide individuals with disabilities access to services that is equal to the access it provides to non-disabled individuals. Specifically, Defendants must provide individuals who are Deaf with appropriate auxiliary aids and services that would enable such direct access, including provision of ASL interpreters. 28 C.F.R. §§ 35.104 and 35.160(b).

56. Defendants have failed to meet their obligations to provide Ms. Boyd with access to services and activities equal to that provided to individuals who are not Deaf and do not have a visual impairment.

57. Defendants have discriminated, against Ms. Boyd on the basis of her disability in violation of Title II of the ADA.

58. The ADA's definition of disability was greatly expanded by the ADA Amendments Act of 2008, which became effective January 1, 2009, and which applies to any actions taking place on or after that date.

59. Unlike the prior law, the definition of disability is now to be construed as broadly as possible, 42 U.S.C. § 12102(4)(A); is assessed in a condition's active state, *id.* § 12102(4)(D); and is assessed without regard to any mitigating measures, *id.* § 12102(4)(E)(i).

60. Defendants failed to modify their policies, practices, and/or procedures to avoid discriminating against Ms. Boyd, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130.

61. Defendants failed to modify their policies, practices, and/or procedures to provide her with effective communication, in violation of 28 C.F.R. § 35.130(7).

62. Upon information and belief, Defendants either lack appropriate effective communication policies or have failed to adequately train staff on following an appropriate effective communication policy.

Count II. Section 504 of the Rehabilitation Act of 1973

63. Ms. Boyd restates and incorporates by reference each and every allegation contained in paragraphs 1 through 62 as if fully set forth herein.

64. Section 504 states that "[n]o otherwise qualified individual with a disability in the United States…shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…" 29 U.S.C. § 794 .

65. Ms. Boyd is substantially limited in major life activities including hearing, speaking, seeing, communicating, and reading.

66. Ms. Boyd is a qualified individual with a disability as defined under Section 504, as amended. 29 U.S.C. § 705(20).

67. At all relevant times, Defendants were and continue to be recipients of federal financial assistance within the meaning of 29 U.S.C. § 794(b)(1).

68. Defendants have discriminated against Ms. Boyd on the basis of her disability by denying her equal access to the services, programs, and benefits offered to others because the police department interview process of a child victim is inaccessible to parent companions who are Deaf or hard-of-hearing, in violation of Section 504.

Count III: Violations of Chapter 121 of the Texas Human Resources Code Against All Defendants

69. Ms. Boyd restates and incorporates by reference each and every allegation contained in paragraphs 1 through 68 as if fully set forth herein.

70. It is the policy of the State of Texas to encourage and enable persons with disabilities to fully participate in the social and economic life of the state, to achieve maximum personal independence, and to fully enjoy and use all public facilities available within the state. TEX. HUM. RES. CODE § 121.001.

71. Pursuant to Chapter 121, Ms. Boyd is a person with a disability. Ms. Boyd has physical disabilities and health impairments, which require special services. *Id.* § 121.002(4). These include, but are not limited to deafness and a visual impairment. TEX. HUM. RES. CODE § 121002(4)(D) and (4)(F).

72. The City of San Antonio and the San Antonio Police Department are public facilities. TEX. HUM. RES. CODE § 121.002.

73. Chapter 121 provides that persons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state. TEX. HUM. RES. CODE § 121.003(a).

74. A public facility must make reasonable accommodations in policies, practices, and procedures to ensure equal access. TEX. HUM. RES. CODE § 121.003(d)(2).

75. A public facility must provide auxiliary aids and services necessary to allow full use and enjoyment of the public facility. TEX. HUM. RES. CODE § 121.003(d)(3).

76. Defendants failed to provide Ms. Boyd with appropriate auxiliary aids and services to allow her to participate in the activities and services of the San Antonio Police Department while Ms. Boyd was the parent companion of her minor son during a police interview of the minor boy by SAPD.

77. Defendants also failed to make reasonable accommodations in their policies, practices, and/or procedures in violation of TEX. HUM. RES. CODE § 121.003(d).

78. Defendants' actions have caused Ms. Boyd significant mental pain, anguish and anxiety, as well as severe stress.

79. A person, including a firm, association, corporation, or other organization, or other public or private organization, or the agent of a person, firm, association, corporation, or other organization, who violates TEX. HUM. RES. CODE § 121.003 commits a misdemeanor offense. Tex. Hum. Res. Code § 121.004 (a).

80. A person, including a firm, association, corporation, or other public or private organization, or the agent of the person, who violates the provisions of TEX. HUM. RES. CODE § 121.003, is deemed to have deprived a person with a disability of her civil liberties, and a person

with a disability, deprived of her civil liberties may maintain a cause of action for damages under Chapter 121. *Id.* § 121.004(b).

INJUNCTIVE RELIEF REQUESTED

Plaintiff respectfully requests that this Court:

81. Issue a declaratory judgment that Defendants' policies, procedures, and practices have and continue to subject Plaintiff to discrimination in violation of the ADA, Section 504, and Chapter 121.

82. Order Defendants to implement appropriate policies and procedures to provide effective communication to individuals who are Deaf, including companions of hearing individuals.

83. Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that denies individuals who are Deaf, such as Plaintiff, equal access to and an equal opportunity to participate in and benefit from Defendants' programs, activities or services.

84. Enjoin Defendants from implementing or enforcing any policy, procedure, or practice that limits or restricts individuals who are Deaf or hard of hearing, such as Plaintiff, from using auxiliary aids and services during a police interview process.

85. Order Defendants to develop and comply with policies, procedures, and practices to ensure that Defendants are able to communicate with individuals who are Deaf.

86. Order Defendants to train all officers, detectives, employees and representatives on the rights of individuals with a disability under the ADA, Section 504, and Chapter 121.

87. Order Defendants to train all officers, detectives, employees and representatives on the criminal penalties provided in Chapter 121 of the Texas Human Resources Code to punish discrimination against individuals with disabilities, including deafness and hearing impairments.

88. Order Defendants to modify their actions, policies, practices, and procedures to provide effective communication, including American Sign Language interpreters, in accordance with the ADA. 42 U.S. C. § 12188(a).

89. Ms. Boyd asks the Court to set her application for injunctive relief for a full trial on the issues in her application and, after the trial, to issue a permanent injunction against Defendants.

ATTORNEYS' FEES

90. Ms. Boyd restates and incorporates by her reference each and every allegation contained in paragraphs 1 through 89 as if fully set forth herein.

91. The unlawful and improper actions by Defendants have resulted in Ms. Boyd needing to retain counsel to assist her with protecting her rights. As a result, Ms. Boyd seeks to recover from Defendants reasonable attorneys' fees, litigation expenses, and costs, including as provided under federal law only. 42 U.S.C. § 12205; 28 C.F.R. § 36.505.

DAMAGES

92. Ms. Boyd restates and incorporates by her reference each and every allegation contained in paragraphs 1 through 91 as if fully set forth herein.

93. As a result of Defendants' acts and omissions, Ms. Boyd has experienced mental or emotional pain and anguish.

94. Defendants acted with a conscious disregard for Ms. Boyd' civil rights.

95. Defendants acted with malice or gross negligence when Defendants denied Ms. Boyd access to an American Sign Language interpreter and effective communication.

96. Accordingly, Ms. Boyd requests an award of statutory and compensatory noneconomic damages and exemplary punitive damages, as applicable, pursuant to TEX. HUM.

RES. CODE § 121.004(b). Ms. Boyd also request an award of compensatory damages under the ADA and Section 504.

CONDITIONS PRECEDENT

97. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

PRAYER

Ms. Boyd prays for the following judgment and relief as outlined above, including:

A. A permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any conduct, policy, practice, or procedure in violation of the ADA such that it discriminates on the basis of disability, and specifically from failing and refusing to provide effective communication including provision of an American Sign Language interpreter;

B. Compensatory damages under all claims;

C. Statutory claims under Chapter 121;

C. Exemplary punitive damages under Chapter 121;

D. Pre-judgment and post-judgment interest;

E. Reasonable attorneys' fees and litigation expenses, including under the ADA and Section 504;

F. Costs; and

G. All other relief to which Plaintiff is entitled.

Respectfully submitted,

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